

total value of the locomotive. Its date of original manufacture would be the date on which you complete its assembly.

(2) If you produce a new locomotive by replacing the engine in a 1990 locomotive with a freshly manufactured engine, but all other parts are used, then the locomotive would likely be considered to be a remanufactured locomotive and its date of original manufacture is the date on which assembly was completed in 1990. (NOTE: such a locomotive would also be considered to be a repowered locomotive.)

(e) Locomotives containing used parts that are deemed to be freshly manufactured locomotives are subject to the same provisions as all other freshly manufactured locomotives. Other refurbished locomotives are subject to the same provisions as other remanufactured locomotives, with the following exceptions:

(1) *Switch locomotives.* (i) Prior to January 1, 2015, remanufactured Tier 0 switch locomotives that are deemed to be refurbished are subject to the Tier 0 line-haul cycle and switch cycle standards. Note that this differs from the requirements applicable to other Tier 0 switch locomotives, which are not subject to the Tier 0 line-haul cycle standards.

(ii) Beginning January 1, 2015, remanufactured Tier 3 and earlier switch locomotives that are deemed to be refurbished are subject to the Tier 3 switch standards.

(2) *Line-haul locomotives.* Remanufactured line-haul locomotives that are deemed to be refurbished are subject to the same standards as freshly manufactured line-haul locomotives, except that line-haul locomotives with rated power less than 3000 hp that are refurbished before January 1, 2015 are subject to the same standards as refurbished switch locomotives under paragraph (e)(1)(i) of this section. However, line-haul locomotives less than 3000 hp may not generate emission credits relative to the standards specified in paragraph (e)(1)(i) of this section.

(3) *Labels for switch and line-haul locomotives.* Remanufacturers that refurbish a locomotive must add a secondary locomotive label that includes the following:

(i) The label heading: “REFURBISHED LOCOMOTIVE EMISSION CONTROL INFORMATION.”

(ii) The statement identifying when the locomotive was refurbished and what standards it is subject to, as follows: “THIS LOCOMOTIVE WAS REFURBISHED IN [year of refurbishment] AND MUST COMPLY WITH THE TIER [applicable standard level] EACH TIME THAT IT IS REMANUFACTURED, EXCEPT AS ALLOWED BY 40 CFR 1033.750.”.

[73 FR 37197, June 30, 2008, as amended at 73 FR 59190, Oct. 8, 2008; 74 FR 8425, Feb. 24, 2009]

EDITORIAL NOTE: At 73 FR 37197, June 30, 2008, §1033.640 was added. This amendment included two paragraphs (c) in the original text.

#### § 1033.645 Non-OEM component certification program.

This section describes a voluntary program that allows you to get EPA approval of components you manufacture for use during remanufacturing.

(a) *Applicability.* This section applies only for components that are commonly replaced during remanufacturing. It does not apply for other types of components that are replaced during a locomotive’s useful life, but not typically replaced during remanufacture. Certified components may be used for remanufacturing or other maintenance.

(1) The following components are eligible for approval under this section:

- (i) Cylinder liners.
- (ii) Pistons.
- (iii) Piston rings.
- (iv) Heads
- (v) Fuel injectors.
- (vi) Turbochargers
- (vii) Aftercoolers and intercoolers.

(2) Catalysts and electronic controls are not eligible for approval under this section.

(3) We may determine that other types of components can be certified under this section, consistent with good engineering judgment.

(b) *Approval.* To obtain approval, submit your request to the Designated Compliance Officer.

(1) Include all of the following in your request:

(i) A description of the component(s) for which you are requesting approval.

(ii) A list of all engine/locomotive models and engine families for which your component would be used. You may exclude models that are not subject to our standards or will otherwise not be remanufactured under a certificate of conformity.

(iii) A copy of the maintenance instructions for engines using your component. You may reference the other certificate holder's maintenance instructions in your instructions. For example, your instructions may specify to follow the other certificate holder's instructions in general, but list one or more exceptions to address the specific maintenance needs of your component.

(iv) An engineering analysis (including test data in some cases) demonstrating to us that your component will not cause emissions to increase. The analysis must address both low-hour and end-of-useful life emissions. The amount of information required for this analysis is less than is required to obtain a certificate of conformity under subpart C of this part and will vary depending on the type of component being certified.

(v) The following statement signed by an authorized representative of your company: We submit this request under 40 CFR 1033.645. All the information in this report is true and accurate to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(2) If we determine that there is reasonable technical basis to believe that your component is sufficiently equivalent that it will not increase emissions, we will approve your request and you will be a certificate holder for your components with respect to actual emissions performance for all locomotives that use those components (in accordance with this section).

(c) *Liability.* Being a certificate holder under this section means that if in-use testing indicates that a certified locomotive using one or more of your approved components does not comply with an applicable emission standard, we will presume that you and other certificate holders are liable for the noncompliance. However, we will not

hold you liable in cases where you convince us that your components did not cause the noncompliance. Conversely, we will not hold other certificate holders liable for noncompliance caused solely by your components. You are also subject to the warranty and defect reporting requirements of this part for your certified components. Other requirements of this part apply as specified in § 1033.1.

(d) *In-use testing.* Locomotives containing your components must be tested according to the provisions of this paragraph (d).

(1) Except as specified in paragraph (d)(5) of this section, you must test at least one locomotive if 250 locomotives use your component under this section. You must test one additional locomotive for the next additional 500 locomotives that use your component under this section. After that, we may require you to test one additional locomotive for each additional 1000 locomotives that use your component under this section. These numbers apply across model years. For example, if your component is used in 125 remanufactures per year under this section, you must test one of the first 250 locomotives, one of the next 500 locomotives, and up to one every eight years after that. Do not count locomotives that use your components but are not covered by this section.

(2) Except for the first locomotive you test for a specific component under this section, locomotives tested under this paragraph (d) must be past the half-way point of the useful life in terms of MW-hrs. For the first locomotive you test, select a locomotive that has operated between 25 and 50 percent of its useful life.

(3) Unless we approve a different schedule, you must complete testing and report the results to us within 180 days of the earliest point at which you could complete the testing based on the hours of operation accumulated by the locomotives. For example, if 250 or more locomotives use your part under this section, and the first of these to reach 25 percent of its useful life does so on March 1st of a given year, you must complete testing of one of the first 250 locomotives and report to us by August 28th of that year.

(4) Unless we approve different test procedures, you must test the locomotive according to the procedures specified in subpart F of this part.

(5) If any locomotives fail to meet all standards, we may require you to test one additional locomotive for each locomotive that fails. You may choose to accept that your part is causing an emission problem rather than continuing testing. You may also test additional locomotives at any time. We will consider failure rates, average emission levels and the existence of any defects among other factors in determining whether to pursue remedial action. We may order a recall pursuant to 40 CFR part 1068 before you complete testing additional locomotives.

(6) You may ask us to allow you to rely on testing performed by others instead of requiring you to perform testing. For example, if a railroad tests a locomotive with your component as part of its testing under §1033.810, you may ask to submit those test data as fulfillment of your test obligations under this paragraph (d). If a given test locomotive uses different components certified under this section that were manufactured by different manufacturers (such as rings from one manufacturer and cylinder liners from another manufacturer), a single test of it may be counted towards both manufacturers' test obligations. In unusual circumstances, you may also ask us to grant you hardship relief from the testing requirements of this paragraph (d). In determining whether to grant you relief, we will consider all relevant factors including the extent of the financial hardship to your company and whether the test data are available from other sources, such as testing performed by a railroad.

(e) Components certified under this section may be used when remanufacturing Category 2 engines under 40 CFR part 1042.

[73 FR 37197, June 30, 2008, as amended at 73 FR 59190, Oct. 8, 2008; 74 FR 8425, Feb. 24, 2009]

**§ 1033.650 Incidental use exemption for Canadian and Mexican locomotives.**

You may ask us to exempt from the requirements and prohibitions of this

part locomotives that are operated primarily outside of the United States and that enter the United States temporarily from Canada or Mexico. We will approve this exemption only where we determine that the locomotive's operation within the United States will not be extensive and will be incidental to its primary operation. For example, we would generally exempt locomotives that will not operate more than 25 miles from the border and will operate in the United States less than 5 percent of their operating time. For existing operations, you must request this exemption before January 1, 2011. In your request, identify the locomotives for which you are requesting an exemption, and describe their projected use in the United States. We may grant the exemption broadly or limit the exemption to specific locomotives and/or specific geographic areas. However, we will typically approve exemptions for specific rail facilities rather than specific locomotives. In unusual circumstances, such as cases in which new rail facilities are created, we may approve requests submitted after January 1, 2011.

**§ 1033.652 Special provisions for exported locomotives.**

(a) *Uncertified locomotives.* Locomotives covered by an export exemption under 40 CFR 1068.230 may be introduced into U.S. commerce prior to being exported, but may not be used in any revenue generating service in the United States. Locomotives covered by this paragraph (a) may not include any EPA emission control information label. Such locomotives may include emission control information labels for the country to which they are being exported.

(b) *Locomotives covered by export-only certificates.* Locomotives may be certified for export under 40 CFR 1068.230. Such locomotives may be introduced into U.S. commerce prior to being exported, but may not be used in any revenue generating service in the United States.

(c) *Locomotives included in a certified engine family.* Except as specified in paragraph (d) of this section, locomotives included in a certified engine